IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 44 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

SHRI AMBICA MILLS LTD

Appearance:

1. INCOME TAX REFERENCE No. 44 of 1995
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 19/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for the opinion of this Court in respect of assessment year 1984-85 :-

(i) Whether, the Appellate Tribunal is right in law and on facts in directing the Income Tax Officer to exclude the amount of medical reimbursement benefits of Rs.19,354/- for the purpose of working out disallowance u/s.40A(5) ?

(ii) Whether, the Appellate Tribunal is right in the law and on facts , in directing the Income Tax Officer to allow deduction of commission paid to Mettur Beard Shell Ltd. of Rs.47,746/- ?

2. We have heard Mr. M.R. Bhatt learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. As regards question No.1, Mr. Bhatt states that the controversy raised herein is concluded by the decision of this Court in the case of Gujarat Steel Tubes Ltd. 210 ITR 358 and in the case of this very assessee 236 ITR 921 wherein this Court has held that medical reimbursement benefits fall within the purview of the provisions of sec. 40 A(5) for the purpose of working out disallowance.

In view of the above decisions, we answer the question in the negative i.e. in favour of the revenue and against the assessee.

4. Coming to question No.2, the learned counsel for the revenue fairly points out that the controversy raised herein is concluded in favour of the assessee, as per the decision of this Court in the case of Ashoka Mills Ltd. 218 ITR 526.

In view of the above decision, we accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-